

### **REMARKS**

This Amendment is in response to the Office Action dated December 11, 2008 in which claims 1-22 were rejected. Applicant respectfully requests reconsideration and allowance of all pending claims in view of the above-amendments and the following remarks.

#### **I. REVIEW OF THE PRESENT APPLICATION**

The present application relates to data transmission in the form of data stream(s). Each data stream is made up of elementary stream units (or packets). An embodiment of the present application optimizes processing of these stream units when they are dependent on preceding stream units in the same stream, or in another stream.

In known techniques, an important difficulty is that of synchronization, when the transmission is made in an asynchronous way. In this case, some stream units emitted after can be received before previously emitted ones. In such a case, one cannot process a received unit of stream, if it is dependent on a preceding unit of stream not yet received.

An embodiment of the present application proposes a new and inventive approach, which includes synchronizing the elementary stream units. The streams themselves are not synchronized. The synchronization of the streams themselves is realized by the “Object Descriptor” of a stream which is dedicated to the description of the scene.

#### **II. POSITION OF THE EXAMINER**

Despite the interview with the Examiner, according to the third Office Action, claims 1 to 22 are still considered unpatentable. More specifically, The Examiner considers claims 1-21 as being not inventive over OKURA (U.S. Publ. No. 2001/0027468) in view of PUTZOLU (U.S. Pat. No. 6,205,140). The Examiner considers claim 22 as being not inventive over OKURA in view of PUTZOLU and further in view of Herrmann (U.S. Pat. No. 6,606,329).

#### **III. CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claims 1-21 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for

failure to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With this Amendment, each independent claim is amended to replace the expression “pointer is a dependency pointer of length depLength” by “pointer is a dependency pointer”.

All claims are now considered sufficiently definite.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. §103 BASED ON OKURA AND PUTZOLU

Claims 1-21 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Okura et al., U.S. Publ. No. 2001/0027468, in view of Putzolu et al., U.S. Pat. No. 6,205,140.

Claim 22 is rejected under U.S.C. §103(a) as being unpatentable over Okura et al. in view of Putzolu et al., and further in view of Herrmann et al., U.S. Pat. No. 6,606,329.

A. **Office Action Fails to Present a Prima Facie Case of Obviousness**

The Applicant does not agree with the position of the Examiner. Indeed, even if the Examiner does not consider the last expression of the claim (“*said dependency descriptor describing said dependency pointer*”), the claim limitations are not disclosed by the prior art.

1. Requirements for a Prima Facie Rejection Under §103(a)

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.<sup>1</sup> If the Examiner does not produce a *prima facie* case of obviousness, the applicant is under no obligation to submit evidence of non-obviousness.<sup>2</sup>

To establish a *prima facie case* of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of

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<sup>1</sup> MPEP Sec. 2142

<sup>2</sup> Id.

success must both be found in the prior art, and not based on applicant's disclosure.<sup>3</sup>

Applicant respectfully traverses the §103 rejection because the Office Action has not established a *prima facie* case of obviousness.

2. The Cited Prior Art Does Not Teach or Suggest All the Claim Limitations

The cited prior art does not disclose all of the elements and limitations of claim 1.

i. **Okula**

The Office Action acknowledges the primary reference, Okula, does not disclose various elements of claim 1, including a dependency pointer, but relies on a secondary reference, Putzolu et al., for allegedly disclosing these elements.

As described in Applicant's prior response, some of the differences between the Applicant's pointers and the sequence numbers of Okura include:

1. The sequence number of Okura does not correspond to a dependency pointer.
2. The sequence number of Okura is not described in a dependency descriptor.
3. In the present application, the pointer in the current stream unit points to a specific previous required unit. In other words, the pointers are not required to be sequential.
4. With the pointer of claim 1, the procedure allows some stream units to be processed in a different order than transmitted. The pointers allow the current stream unit to be processed if the required previous unit or units (to which the pointer points) have been received, even if other, stream units of the stream that were transmitted between the current stream unit and the required previous unit have not yet been received. Okura does not disclose or suggest that the sequence numbers of Okura allow a current stream unit to be processed if other stream units of the stream have not yet been received.
5. The pointers point to a specific stream unit or units but does not point to all previous streams units.
6. The sequence number of Okura is the "name" of the stream unit, while the pointer of claim 1 is the name of an associated stream unit of the stream or of another stream, for example.

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<sup>3</sup> Id.

ii. **Putzolu et al.**

Putzolu does not teach or suggest the elements of claim 1 that are not taught or disclosed by Okula.

For example, Putzolu does not teach that “[...] said stream units include at least one pointer that points to at least one stream unit [...]”.

The Examiner considers that the “arrow” of figure 1 and the paragraph (col.2, lines 63-67) disclose that there is a pointer between stream units.

Applicant disagrees. In column 2, last paragraph, Putzolu discloses “an example of a directed graph illustrating dependencies”. Furthermore, it is described that in figure 1, nodes represent a particular media **stream** (col.2, line 58) (audio or video) and not stream units (packets). Moreover, in column 2, lines 63-67, Putzolu discloses that “*an arrow directed from a first node (which is a stream) to a second node (which is also a stream) indicates that the first node (stream) depends directly upon the second node (stream), so that the second node (stream) is required for the first node (stream) to be of use*”.

So, in Putzolu, **an arrow is not a pointer**. An arrow just shows a dependency relation between two streams.

Second, Putzolu discloses “stream descriptors” which are enclosed in RAP packets. These RAP packets are occasionally transmitted in a separate control stream, “*for dynamically defining a variable set of media streams belonging to a media presentation, along with their dependencies . ...*” (Col. 2, lines 16-19). In column3, lines 33 to 35, Putzolu states, “*There is a one-to-one mapping or association between each Stream Descriptor and each media stream comprising the media presentation. Each media stream associated with a Stream Descriptor is implicitly **numbered** according to the numerical order of its associated Stream Descriptor.*”

From col.3, line 62 to col. 4, line 24, Putzolu describes the header 100 of the RAP packet and the stream descriptors 110. More particularly, Putzolu describes that “*Stream Descriptors 110 comprises Dependency Information (**d**) field **150** . . .*” In col.5, line 28 to 33, it is indicated: “*For a given media stream, **d** field or attribute **150** contains a list of media streams needed for rendering the given media stream. These required media streams may be for technical or social*

*reasons, as discussed earlier. In a preferred embodiment, a media stream that does not depend upon any other media streams will have  $d=0$* ". No other references can be found in "Putzolu" to describe the form of the list of media stream. More particularly, there is no description of a dependency pointer in "Putzolu".

Further, the "Stream Descriptors" of Putzolu, although included in a RAP packet, cannot be considered to disclose a "dependency descriptor" including a "dependency pointer" according to claim 1 since the RAP packet Stream Descriptors do not include a pointer that points to at least one stream unit that is required for processing of that stream unit (i.e., that RAP packet). According to claim 1,

*"at least some of said stream units include at least one pointer that points to at least one stream unit of said stream or of another stream that may have been received previously in the terminal, called a required previous unit, so that the processing of said stream unit is not performed in said terminal if the required previous unit or units have not been received . . ."*

The RAP packets of Putzolu do not satisfy this feature of claim 1.

### 3. No Suggestion or Motivation to Combine

The Office Action has not provided a suggestion or motivation to combine the cited references.

Although evidence of a motivation to combine need not be found in the prior art reference themselves, if it is found in the knowledge of one of ordinary skill in the art or, in some cases, from the nature of the problem to be solved, the Office Action must do more than simply discuss the ways that the multiple prior art references can be combined to read on the claimed invention.

Rather, the Office Action must point out "specific information in [the two references] that suggests the combination."<sup>4</sup> "The [Office Action must] explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination".<sup>5</sup> In *KSR Int'l Co. v. Teleflex Inc. et.al.*<sup>6</sup>, the Supreme Court re-affirmed that: "Rejections on obviousness grounds cannot be sustained by mere conclusory

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<sup>4</sup> See *Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356,1366, 80 USPQ2d

<sup>5</sup> *Id.* at 1367 (citing in re Rouffet, 149 F.3d 1350, 1357 (Fed. Cir. 1998)

statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”.<sup>7</sup> Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.<sup>8</sup>

Furthermore, even if the one of ordinary skill in the art would have combined Okura and Putzolu, he would not have obtained the limitations of claim 1. Indeed, the disclosure of Putzolu is based on the RTP protocol (*see col.3, line 33*). This protocol is well known to one skilled in the art and is using sequence numbers simply to indicate that first and second control data packets are consecutive.

To arrive at the invention recited in claim 1, for example, when looking at Okura and Putzolu, it is necessary to:

- Detect the approach of Okura was not adequate;
- Understand that it is desirable to take into account the distinct streams, in order to simplify the processing of decoding;
- Decide to insert pointers in the stream units themselves to allow synchronizing stream units with other stream units of the same stream or another stream previously received. This is not described nor disclosed in Putzolu et al.

#### **B. Office Action Lacks Application of *Graham v. John Deere Co.* Test**

The Examiner has not applied the test of *Graham v. John Deere Co.*<sup>9</sup> The MPEP requires the Examiner to do so.<sup>10</sup> However, the Examiner has made no finding of the level of ordinary skill in the art.<sup>11</sup>

The Federal Circuit routinely vacates conclusions of obviousness when the fact finder

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<sup>6</sup> *KSR Int'l v. Teleflex, Inc.*, 127 S.Ct. 1727.82 USPQ2d 1385 (2007)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 383 U.S. 1 (1966)

<sup>10</sup> MPEP §2141

failed to make Graham factor findings.<sup>12</sup> This is especially so when the fact finder makes conclusory statements that "'do not fulfill the agency's obligation' to explain all material facts relating to a motivation to combine."<sup>13</sup> The Supreme Court has re-affirmed this need: Often, it will be necessary for a court to look to ... the background knowledge possessed by a person of ordinary skill in the art ... in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.<sup>14</sup>

V. CLAIM REJECTIONS UNDER 35 U.S.C. §103 BASED ON OKURA, PUTZOLU AND HERMANN

Claim 22 is rejected under U.S.C. §103(a) as being unpatentable over Okura et al. in view of Putzolu et al., and further in view of Herrmann et al., U.S. Pat. No. 6,606,329.

Since neither Okura nor Putzolu et al. anticipates the elements of claim 1, and since Hermann also does not disclose the pointers recited in claim 1, the combination of Okura, Putzolu and Hermann also does not teach or suggest the invention recited in claim 1 or the other independent claims.

Hermann is discussed in greater detail in Applicant's prior response, which is incorporated herein.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

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<sup>11</sup> MPEP §2141.03

<sup>12</sup> *Dystar*, 464 F.3d 1366 and cases cited therein.

<sup>13</sup> *Id.*

<sup>14</sup> *KSR*, 550, U.S.at \_\_\_\_ (2007)

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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